Filed 9/19/06 In re Keshawn B. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re KESHAWN B., a Person Coming Under the Juvenile Court Law.	B186462 (Los Angeles County Super. Ct. No. JJ11995)
THE PEOPLE, Plaintiff and Respondent, v. KESHAWN B., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, S. Robert Ambrose, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed.

Patricia Winters, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Robert F. Katz and Lauren E. Dana, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

In an amended petition filed pursuant to Welfare and Institutions Code 602, the People alleged that appellant Keshawn B. had violated a gang injunction (Pen. Code, § 166, subd. (a)). Appellant denied the petition's allegations. After conducting a contested disposition hearing, the juvenile court sustained the petition, declared appellant a ward of the court, and committed him to the care of the probation department.

On this appeal, we address only appellant's challenges to the constitutionally of the gang injunction and the sufficiency of the evidence to support the juvenile court's finding that appellant had violated the injunction. We hold that the language of the injunction comports with constitutional standards but find that the prosecution failed to adduce substantial evidence that appellant knew he was associating with gang members. We therefore reverse the order of wardship. Consequently, we do not consider appellant's additional claims relating to unconstitutional probation conditions, calculation of custody credit and computation of the maximum term.

STATEMENT OF FACTS

On August 26, 2005, Los Angeles Police Officer Charles Garcia served appellant with an injunction that prohibited him, *inter alia*, from "standing, sitting, walking, driving, gathering or appearing anywhere in public view, in a public place or in anyplace accessible to the public, with any other known Bounty Hunter gang member," within the parameters of a "Safety Zone" described in the injunction.[1]

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[1] The Los Angeles Superior Court issued the order in *People v. Bounty Hunters*, case No. BC301433. The "Safety Zone" is the area in between 108th Street to the north, Central Avenue to the west, Imperial Highway to the south, and the rail line of Los Angeles Metropolitan Transit Authority Blue Line to the east.

Officer Garcia testified that prior to serving appellant with the gang injunction, appellant had told him that he was a member of "A-Slang", a clique of the Bounty Hunter gang.

Two days later, Officer Garcia spotted appellant within the "Safety Zone." Appellant was standing with approximately six other people on Success Street. Officer Garcia testified that all of the individuals with whom appellant was standing were Bounty Hunter gang members. Consequently, the officer arrested appellant for violating the provision of the injunction prohibiting public association with known gang members.

Appellant testified in defense. He denied being a gang member, having told Officer Garcia that he was a Bounty Hunter gang member, and having been served by Officer Garcia with the gang injunction. Appellant did not "know what it takes . . . to become a gang member" and did not know how many individuals were members of the Bounty Hunter gang. He testified that when Officer Garcia arrested him, he had been standing in line with others waiting for a haircut. Appellant acknowledged that Bounty Hunter members signify their gang affiliation with specific tattoos, often found on the neck. However, appellant was not asked whether any of the individuals in line had such tattoos.

On cross-examination, the prosecutor asked appellant whether he was familiar with the other men in the line, each of whom the prosecutor identified by name and nickname. Appellant responded, "They were in line to get their hair cut with me." When pressed by the prosecution, appellant indicated that he was familiar with the Bounty Hunter gang but explained that it was through living in the projects. Appellant denied that he was going to have his hair cut at the home of a gang member.

The juvenile court found that appellant had violated the injunction and declared him to be a ward of the court.

DISCUSSION

I. *Forfeiture of Constitutional Challenge*

Appellant argues that the court injunction is unconstitutionally vague because it lacks a knowledge requirement. The Attorney General, relying on *People v. Scott* (1994) 9 Cal.4th 331, 351-352, claims that appellant's failure to object to the injunction in a timely fashion in the juvenile court forfeits this claim on appeal. We disagree. Because appellant's claim raises a "pure question of law," he has not forfeited the right to raise it. (*People v. Yeoman* (2003) 31 Cal.4th 93, 118.)[2]

II. *Constitutional Challenge*

Appellant argues that "[s]ince no . . . personal knowledge was required of appellant the injunction as applied was unconstitutional and appellant should not have been punished for contempt of that order." We disagree. The injunction is constitutionally valid because it implicitly contains a knowledge requirement. The injunction prohibits, in relevant part, "Defendant Bounty Hunters . . . and all persons acting under, in concert with, for the benefit of, at the direction of, or in association with them or any of them [from] standing, sitting, walking, driving, gathering or appearing anywhere in public view, in a public place or in anyplace accessible to the public, with any other *known* Bounty Hunter gang member." (Italics added.) The order references a "*known* Bounty Hunter gang member"--

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[2] In a related context, the issue whether an objection in the juvenile court is necessary to mount a purely legal challenge on appeal to a probation condition is pending in the California Supreme Court in *In re Sheena K.*, S123980 (review granted June 9, 2004).

which can only reasonably mean an individual known to those bound by the injunction to be a Bounty Hunter gang member.

Our conclusion follows our Supreme Court's holding in *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090 (*Acuna)*. In *Acuna*, the Court considered a constitutional challenge of vagueness made to a gang injunction. The Court held in pertinent part:

> "In the Court of Appeal's view, provision (a)'s prohibition against associating with 'any other known "VST" . . . or "VSL" . . . member' might apply to a circumstance in which a defendant was engaged in one of the prohibited activities with someone known to the police but *not known to him* to be a gang member. According to the Court of Appeal, such indefiniteness presented 'a classic case of vagueness.' We agree that in such a hypothetical case, the City would have to establish a defendant's *own knowledge* of his associate's gang membership to meet its burden of proving conduct in violation of the injunction. Far from being a 'classic' instance of constitutional vagueness, however, we think the element of knowledge is fairly implied in the decree." (*Id.* at p. 1117.)

By a parity of reasoning, the injunction in this case is constitutionally valid because it implicitly proscribes appellant from associating with any individual *he knows* to be a Bounty Hunter gang member.

III. *Substantial Evidence*

Appellant contends that there "was no testimony as to who the other people gathered on Success Street that day were, or whether appellant knew that they allegedly belonged to a gang." We conclude that the prosecution failed to adduce substantial evidence that appellant knew he was associating with Bounty Hunter gang members.

It is well-settled that the principles of appellate review of criminal trials are equally applicable to review of juvenile court proceedings. (*In re Roderick P.*

(1972) 7 Cal.3d 801, 809.) In reviewing the sufficiency of the evidence on appeal, we "'review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence--that is, evidence which is reasonable, credible, and of solid value--such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.'" (*In re Jose T.* (1991) 230 Cal.App.3d 1455, 1460.)

Viewing the record in the light most favorable to the juvenile court's judgment, the evidence establishes that appellant, a member of the Bounty Hunter gang, was served with an injunction and, two days later, was seen standing in line with other Bounty Hunter gang members. However, the record contains no evidence appellant knew the men were Bounty Hunter gang members. The circumstance that appellant was a Bounty Hunter gang member as were the men with whom he was congregating is insufficient to establish the required knowledge. The prosecutor failed to introduce any evidence about how many members the gang had, or any prior gang-related contact appellant had had with these men. Although appellant testified, the prosecutor never asked him if he knew the men were Bounty Hunter gang members or if he observed Bounty Hunter tattoos on them.

The Attorney General unpersuasively claims that "after being read names and monikers of other people present that day with appellant and asked if it were true that appellant knew all the people and their monikers, appellant never said no or denied it, but stated, 'They were in line to get their hair cut with me,' thus supporting the inference that appellant knew they were fellow gang members." To the contrary, we find that appellant's response provides no reasonable support for the inference that he knew the individuals with whom he was standing were Bounty Hunter gang members. Appellant's statement suggests nothing more than a familiarity with the names and nicknames of certain individuals.

The Attorney General points to, "[a]dditional evidence from which it could be deducted that appellant knew the people with whom he was associating were Bounty Hunter gang members." He states that appellant "testified that Bounty Hunters had tattoos that said Bounty Hunters to signify their membership . . . [Hence it was] a logical inference that appellant could and did recognize members of the gang." We disagree. The record is devoid of any evidence that the individuals with whom appellant was standing had Bounty Hunter tattoos. Therefore, we cannot reasonably infer that appellant knew he was associating with Bounty Hunter gang members on this basis.

DISPOSITION

The order of wardship is reversed.

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WILLHITE, Acting P. J.

We concur:

MANELLA, J. SUZUKAWA, J.